

(5) Is not precedential.

[60 FR 53137, Oct. 12, 1995]

#### § 240.411 Appeals.

(a) Any party aggrieved by the presiding officer's decision may file an appeal. The appeal must be filed within 35 days of issuance of the decision with the Federal Railroad Administrator, 400 Seventh Street SW., Washington, DC 20590. A copy of the appeal shall be served on each party. The appeal shall set forth objections to the presiding officer's decision, supported by reference to applicable laws and regulations and with specific reference to the record. If no appeal is timely filed, the presiding officer's decision constitutes final agency action.

(b) A party may file a reply to the appeal within 25 days of service of the appeal. The reply shall be supported by reference to applicable laws and regu-

lations and with specific reference to the record, if the party relies on evidence contained in the record.

(c) The Administrator may extend the period for filing an appeal or a response for good cause shown, provided that the written request for extension is served before expiration of the applicable period provided in this section.

(d) The Administrator has sole discretion to permit oral argument on the appeal. On the Administrator's own initiative or written motion by any party, the Administrator may grant the parties an opportunity for oral argument.

(e) The Administrator may affirm, reverse, alter or modify the decision of the presiding officer and the Administrator's decision constitutes final agency action.

[56 FR 28254, June 19, 1991, as amended at 60 FR 53138, Oct. 12, 1995]

#### APPENDIX A TO PART 240—SCHEDULE OF CIVIL PENALTIES <sup>1</sup>

Section	Violation	Willful violation
Subpart B—Component Elements		
240.101—Program Failures		
(a) Failure to have program .....	\$5,000	\$10,000
(b) Program that fails to address a subject .....	2,500	5,000
240.103—Failure to:		
(a) follow Appendix B .....	1,000	2,000
(d) to resubmit, when directed by FRA .....	1,000	2,000
240.105—Failure to have adequate procedure for selection of supervisors .....	2,500	5,000
240.107—Classes of Service		
(a) Failure to designate classes of service .....	2,000	4,000
240.109—Limitations on considering prior conduct records		
(a) Failure to have procedure for determining eligibility .....	2,500	5,000
(e) Considering excluded data .....	2,000	4,000
(f,g) Failure to provide timely review opportunity .....	2,000	4,000
240.111—Furnishing Motor Vehicle Records		
(a) Failure to action required to make information available .....	1,000	2,000
(b) Failure to request		
(1) local record .....	1,000	2,000
(2) NDR record .....	1,000	2,000
(f) Failure to request additional record .....	1,000	2,000
(e) Failure to notify of absence of license .....	750	1,500
(h) Failure to submit request in timely manner .....	750	1,500
240.113—Furnishing prior employment information		
(a) Failure to take action required to make information available .....	1,000	2,000
(b) Failure to request record .....	1,000	2,000
240.115—Criteria for considering prior motor vehicle conduct		
(b) Considering excluded data .....	2,000	4,000
(c) Failure to		
(1) consider data .....	5,000	7,500
(3,4) properly act in response to data .....	2,500	5,000
240.117—Consideration of operational rules compliance records		
(a) Failure to have program and procedures .....	5,000	10,000
(b-d) Failure to have adequate program or procedure .....	2,500	5,000
240.119—Consideration of substance abuse /rules compliance records		
(a) Failure to have program and procedures .....	5,000	10,000
(b-e) Failure to have adequate program or procedure .....	2,500	5,000
240.121—Failure to have adequate procedure for determining acuity .....	2,500	5,000
240.123—Failure to have		
(a) adequate procedures for continuing education .....	2,500	5,000
(b) adequate procedures for training new engineers .....	2,500	5,000

APPENDIX A TO PART 240—SCHEDULE OF CIVIL PENALTIES<sup>1</sup>—Continued

Section	Violation	Willful violation
240.125—Failure to have		
(a) adequate procedures for testing knowledge .....	2,500	5,000
(d) adequate procedures for documenting testing .....	2,500	5,000
240.127—Failure to have		
(a) adequate procedures for evaluating skill performance .....	2,500	5,000
(c) adequate procedures for documenting skills testing .....	2,500	5,000
240.129—Failure to have		
(a–b) adequate procedures for monitoring performance .....	2,500	5,000
Subpart C—Implementation of the Process		
240.201—Schedule for implementation		
(a) Failure to select supervisors by specified date .....	1,000	2,000
(b) Failure to identify grandfathered engineers .....	2,000	4,000
(c) Failure to issue certificate to engineer .....	1,000	2,000
(d) Allowing uncertified person to operate .....	5,000	10,000
(e–g) Certifying without complying with subpart C .....	2,500	5,000
(h–i) Failure to issue certificate to engineer .....	1,000	2,000
240.203 (a) Designating a person as a supervisor without determining that		
(1) person knows and understands this part .....	2,500	5,000
(2) person can test and evaluate engineers .....	5,000	7,500
(3) person has experience to prescribe remedies .....	2,500	5,000
(b) Certifying a person without determining that		
(1) person meets the eligibility criteria .....	5,000	7,500
(2) person meets the medical criteria .....	2,500	5,000
(3) person has demonstrated knowledge .....	2,500	5,000
(4) person has demonstrated skills .....	2,500	5,000
(c) Certifying a person without determining that		
(1) person has completed training program .....	2,500	5,000
(2) person meets the eligibility criteria .....	2,500	5,000
(3) time has elapsed .....	2,500	5,000
240.205—Procedures for determining eligibility based on prior safety conduct		
(a) Selecting person lacking eligibility .....	5,000	7,500
(d) Failure to have basis for taking action .....	2,500	5,000
240.207—Ineligibility based on medical condition		
(a) Selecting person lacking proper acuity .....	2,000	4,000
(b) Failure to have basis for finding of proper acuity .....	1,000	2,000
(c) Acuity examinations performed by unauthorized person .....	1,000	2,000
(d) Failure to note need for device to achieve acuity .....	1,000	2,000
(e) Failure to use device needed for proper acuity .....	1,000	2,000
240.209—Demonstrating knowledge		
(b) Failure to properly determine knowledge .....	2,500	5,000
(c) Improper test procedure .....	2,000	4,000
(d) Failure to document test results .....	1,000	2,000
(e) Allowing person to operate despite test failure .....	2,500	5,000
240.211—Demonstrating skills		
(b) Failure to properly determine knowledge .....	2,500	5,000
(c) Improper test procedure .....	2,000	4,000
(d) Failure to document test results .....	1,000	2,000
(e) Allowing person to operate despite test failure .....	2,500	5,000
240.213—Completion of approved training program		
(a) Failure to properly determine .....	2,500	5,000
(b) Failure to document successful program completion .....	2,000	4,000
240.215—Supporting information		
(a, f–h) Failure to have a record .....	1,000	2,000
(b) Failure to have complete record .....	500	1,000
(i) Falsification of record .....	(–)	10,000
240.217—Time limits for making determinations		
(a, c) Exceeding time limit .....	2,000	4,000
240.219—Denial of certification		
(a) Failure to notify or provide opportunity for comment .....	2,000	4,000
(c) Failure to notify, provide data, or untimely notification .....	2,000	4,000
240.221—Identification of persons		
(a–c) Failure to have a record .....	2,000	4,000
(d) Failure to update a record .....	2,000	4,000
(e–f) Failure to make a record available .....	1,000	2,000
240.223—Certificate criteria		
(a) Improper certificate .....	500	1,000
(b) Failure to designate those with signatory authority .....	500	1,000
(d) Falsification of certificate .....	(–)	10,000
240.225—Railroad Relying on Determination of Another		
(a) Reliance on expired certification .....	2,500	5,000
(b) Reliance on wrong class of service .....	2,500	5,000

APPENDIX A TO PART 240—SCHEDULE OF CIVIL PENALTIES<sup>1</sup>—Continued

Section	Violation	Willful violation
(c) Failure to familiarize person with new operational territory .....	2,000	4,000
(d) Failure to determine knowledge .....	2,000	4,000
240.227—Railroad Relying on Requirements of a Different Country		
(a) Joint operator reliance		
(1) on person not employed .....	1,000	2,000
(2) on person who fails to meet Canadian requirements .....	1,000	2,000
(b) Canadian railroad reliance		
(1) on person not employed .....	1,000	2,000
(2) on person who fails to meet Canadian requirements .....	1,000	2,000
240.229—Railroad Controlling Joint Operation Territory		
(a) Allowing uncertified person to operate .....	2,000	4,000
(b) Certifying without making determinations or relying on another railroad .....	2,500	5,000
(c) Certifying without determining		
(1) certification status .....	2,500	5,000
(2) knowledge .....	2,500	5,000
(3) skills .....	2,500	5,000
(4) familiarity with physical characteristics .....	2,000	4,000
(d) Failure to provide qualified person .....	2,000	4,000
Subpart D—Program Administration		
240.301—Failure to have system for certificate replacement	2,000	4,000
240.303—Monitoring operations		
(a) Failure to have program .....	5,000	10,000
(b) Failure to observe each person annually .....	1,000	2,000
(c) Failure to test each person annually .....	1,000	2,000
(d) Failure to test properly .....	1,000	2,000
240.305—Prohibited conduct		
(a) Unlawful		
(1) control of speed .....	2,500	5,000
(2) passing of stop signal .....	2,500	5,000
(3) occupancy of main track without authority .....	2,500	5,000
(b) Failure of engineer to		
(1) carry certificate .....	1,000	2,000
(2) display certificate when requested .....	1,000	2,000
(c) Failure of engineer to notify railroad of limitations or railroad requiring engineer to exceed limitations .....	4,000	8,000
(d) Failure of engineer to notify railroad of denial or revocation .....	4,000	8,000
240.307—Revocation of certification		
(a) Failure to withdraw person from service .....	2,500	5,000
(b) Failure to notify, provide hearing opportunity; or untimely procedures .....	2,000	4,000
240.309—Oversight responsibility report		
(a) Failure to report or to report on time .....	500	1,000
(b-f) Incomplete or inaccurate report .....	2,000	4,000

<sup>1</sup> A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$22,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

[56 FR 28254, June 19, 1991, as amended at 60 FR 53138, Oct. 12, 1995; 63 FR 11624, Mar. 10, 1998]

#### APPENDIX B TO PART 240—PROCEDURES FOR SUBMISSION AND APPROVAL OF LOCOMOTIVE ENGINEER QUALIFICATION PROGRAMS

This appendix establishes procedures for the submission and approval of a railroad's program concerning the training, testing, and evaluating of persons seeking certification or recertification as a locomotive engineer in accordance with the requirements of this part (see §§ 240.101, 240.103, 240.105, 240.107, 240.123, 240.125, 240.127 and 240.129). It also contains guidance on how FRA will exercise its review and approval responsibilities.

#### *Submission by a Railroad*

As provided for in § 240.101, each railroad must have a program for determining the qualifications of each person it permits or requires to operate a locomotive. In designing its program a railroad must take into account the trackage and terrain over which it operates, the system(s) for train control that are employed, the operational design characteristics of the track and equipment being operated including train length, train make-up, and train speeds. Each railroad must submit its individual program to FRA for approval as provided for in § 240.103. Each program must be accompanied by a request for approval organized in accordance with this appendix. Requests for approval must contain appropriate references to the relevant